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# Elected or Appointed Officials ?

BY

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**American Academy of Political and Social Science,**

STATION B, PHILADELPHIA, U. S. A.

## ELECTED OR APPOINTED OFFICIALS?

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### A CANADIAN QUESTION.

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#### I.

The subject to which I am about to direct the attention of the members of the Academy is not simply a question in which the Canadian people alone have a deep interest. On the contrary I think I shall be able to show, before I have concluded my argument, that it necessarily brings up considerations affecting the political system of the United States, and is consequently of much importance to all who are interested in the problems of government, federal, state and municipal, on this continent, and are endeavoring, with patriotic zeal, to reach a solution that will remove many difficulties and evils that are now deeply injurious to the working of democratic institutions.

Some months ago the government of the Province of Ontario, which comprises nearly one-half of the total population of the Dominion, and is in every way the most wealthy and influential section of the federation, appointed an important commission, composed of one of the ablest judges of the Canadian bench, Mr. Chancellor Boyd, of the Honorable

John Beverly Robinson, late lieutenant-governor, and of three other gentlemen of less national repute, but chosen from their knowledge of county and municipal affairs. The object of this commission is to consider the best mode of appointing and paying a certain class of provincial officials. Its significance lies in the fact that it indicates the existence of a disturbing element in the province, having in contemplation a change in the present mode of nominating and appointing public officers by the crown or lieutenant-governor on the advice of his constitutional council; that is to say, by the cabinet or ministry, who are responsible at once to the crown and to the legislative assembly in which they have seats, and by whose support only they can retain office. An agitation has been commenced which has, happily, not extended beyond a very limited area of influence in this one province, to make certain appointments elective, as in the United States, or else give them to the municipal councils of the counties. This agitation has obtained a slight headway by the fact that it is fostered by a few politicians who have either not given the subject the least reflection, or felt they can gain an evanescent political advantage by concurring in the opinions that appear to be entertained in some rural constituencies where sound principles of political science are not well understood, or where the hope of obtaining control of a few important public offices has outweighed those considerations of sound public policy and public interest which lie at the foundation of the present system of appointments. Although, as I have already said, the movement is not supported by any large section of people—indeed, the inquiry before the commissioners fully proves that fact—still the existence of the commission gives a positive gravity to the subject which otherwise, possibly, it would not have, and renders it necessary that all those who value the welfare of the community—for its welfare is obviously involved in its conditions of government—should seriously consider the matter in all its bearings with the view of informing the

public mind in case it has doubts, and of leading it from any fallacious conclusions to which a few thoughtless persons have been attempting from time to time of late to lead public opinion in a province whose action on political or other questions naturally attracts much attention throughout the Dominion.

## II.

In order that all the issues involved in the inquiry before the commission may be thoroughly understood it is necessary that I should at the outset make some explanations with respect to the present system of appointing and paying officials, and in doing so I may state that the one which obtains in Ontario, is that of all the other provinces of Canada—in fact, the system which has come from England in accordance with the principles of parliamentary or responsible government, and prevails from one end of the Dominion to the other, including the Northwest territories. At the present time there are in the Province of Ontario the following functionaries and officials, legislative, executive, administrative and judicial, who legislate, expound the law, and administer the affairs of the province generally, in accordance with the British North America Act of 1867, which is the fundamental law which regulates the jurisdiction of each province within its territorial and legal limits:

1. *The Executive Department*: A lieutenant-governor, appointed practically for five years, and removable for cause by the governor-general in council—that is, by the government of the Dominion.

An executive or advisory council, composed of the following ministers, called to office by the lieutenant-governor, having seats in an assembly, elected by the people, and holding office only as long as they retain the confidence of the majority of that house: an attorney-general, generally the prime minister, as at present; a commissioner of crown lands, a commissioner of public works, a provincial secretary, a provincial treasurer, a minister of education, a

minister of agriculture, and sometimes, as now, one or more executive councilors without a departmental office.

Under these several executive and administrative political heads there is a large permanent body of public officials, consisting of deputy ministers, secretaries and clerks, who perform all the duties that devolve on the several departments in accordance with law and custom. The officers and clerks come under statutes regulating appointments and promotions. Every candidate for a clerkship at the seat of government enters, after an examination as to qualifications and character, on a probation of six months. No appointment or promotion can be made except under the authority of the lieutenant-governor in council, upon the application and report of the head of the department in which it is to be made.

2. *The Legislative Department*: The lieutenant-governor, who is not only the executive, but the first branch of the legislature\*; a legislative assembly, consisting of ninety-four members elected by universal suffrage (only limited by a short residence and actual citizenship), for a term of four years, unless sooner dissolved by the lieutenant-governor acting in his executive capacity. Attached to the legislative assembly are a speaker, elected by the house; a clerk, a sergeant-at-arms, appointed by the lieutenant-governor in council, and a number of clerks, messengers and pages appointed by the speaker and government.

3. *The Judicial Department*: A supreme court of judicature, consisting of a court of appeal, composed of a chief justice and three justices; a high court of justice in three divisions, as follows: queen's bench, with a chief justice and two justices; chancery, with a chancellor and three justices; common pleas, with a chief justice and two justices.

All the foregoing justices are appointed and paid by the

\* At the present time, of the seven provinces of the federation only two have an upper chamber, or legislative council—Quebec and Nova Scotia. Ontario has had none since 1867, when the union was inaugurated. The legislature of the territories also has only an elective assembly.

Dominion government, and can be removed only for sufficient cause by an address to the governor-general from the two houses of the Dominion parliament. In connection with this supreme court of judicature there are five registrars, ten clerks, seven criers and minor servants, all appointed by the lieutenant-governor in council. Their salaries are, as a rule, fixed by law, and all fees received by them are payable into the public treasury.

In addition to this supreme court, there are the following judicial officers:

County judge—in the majority of cases, a senior and a junior in each county—appointed, paid and removable for cause by the Dominion government. Surrogate judge, whose duties are generally performed by a county judge under the provincial statute; master in chambers, master in ordinary, official guardian, inspector of local offices, inspector of titles, accountant of supreme court, inspector of public offices, clerk of the process, clerk of assize, reporters, shorthand writers, master of titles—all of whom, as well as a number of minor clerks and servants, are appointed by the lieutenant-governor in council. Several of these offices may be held by one person at the same time.

The civil service act, it is necessary to mention here, can be applied to the master in chambers, master in ordinary, registrars of the court of appeal and of the several divisions of the high court of judicature, accountant, surrogate clerk, clerk of records and writs, clerk of process, and clerk in chambers. The statute, however, leaves this within the discretion of the lieutenant-governor in council.

4. *Provincial Officers in Districts:* The foregoing officers, for the most part, are connected with the supreme court of judicature, which reside at the political and judicial capital, the city of Toronto. But in order to make this review as intelligible and valuable as possible, I shall also specify the various officers and other persons connected with the whole public and municipal service, as necessarily involved in the

argument and in the conclusion to which I wish to come. In every county of the province there are, in addition to the county judges mentioned above, the following executive and *quasi* judicial officers: Sheriff, local and deputy master, deputy registrar of the high court of justice, deputy clerk of the crown, clerk of county court, registrar of surrogate court, county crown attorney, clerk of the peace, coroner, division court clerk, division court bailiff, criers and constables.

In addition to the foregoing officials, we have in the large cities and towns of the province one hundred and twelve police magistrates.

All these officials, as enumerated above, are appointed by the lieutenant-governor in council. Police magistrates are paid fixed salaries, but sheriffs, registrars, and other persons in the list receive fees, out of which they pay their own salaries and all the expenses of their respective offices. In the case of registrars the salaries are regulated by statute, as I shall show presently. Every officer receiving fees must send a return of the same every year to the proper authority at Toronto, and it is published in the official statement laid before the legislature. The division courts, registry and other offices are regularly inspected by officers appointed by the lieutenant-governor in council.

5. *Municipal Councils*: Warden of county, appointed by every county council, from among the reeves and deputy reeves that compose that body. Mayor of city and town elected by the ratepayers on a general vote. Reeve and head of township and village councils, elected, as a rule, by ratepayers in such municipalities. Aldermen in cities, councilors in towns, villages and townships, elected by the ratepayers in their respective municipalities, to constitute the councils thereof. All these municipal authorities are annually elected in the month of January.

Attached to these several municipal corporations are the following officers, appointed in all cases by the councils: Clerk, treasurer, assessment commissioner in some cities,

city engineer, assessors and collectors, auditors, valuers, pound-keepers, fence-viewers, overseers of highways, road surveyors, road commissioners, game inspectors and other officials necessary for the administration of municipal affairs. All important officers, like clerks and treasurers, remain in office during good behavior.

High school trustees are appointed by the councils of the municipalities. Public school trustees are elected by the ratepayers in the several municipal divisions. Inspectors of public schools are appointed by county councils for counties, and by board of trustees for cities, from persons who have a regular certificate of qualification according to the regulations of the educational department. Inspectors of high, normal and model schools are appointed by the government.

6. *Special Classes of Officials*: In addition to the foregoing municipal officers there are the following classes of officials of a special character, and confined to a few localities: Chairman and members of provincial board of health, appointed by the lieutenant-governor in council. Superintendent, officers and servants of reformatories, by the lieutenant-governor in council; superintendent and bursar of insane asylums, by the same authority; keepers and attendants, by the superintendent; inspectors of prisons, public charities, asylums and reformatories, by lieutenant-governor in council; keepers and turnkeys of county gaols, by sheriff of county; but the appointments are subject to the approval of the lieutenant-governor in council, and salaries are fixed by the county councils. Constables in charge of lock-ups in municipalities, by the magistrates in courts of general sessions. High and other constables, by the general sessions, or county judge or police magistrate; members of the police force in cities by the board of commissioners composed by law of the county judge, police magistrate and the mayor; in municipalities where no such board exists the appointment of peace officers rests with the councils.

## III.

From the foregoing summary of the legislative, administrative, judicial and municipal machinery of the province, from the head of the executive to the crier or pound-keeper, it will be seen that there are practically no persons having executive or ministerial functions to perform—apart, of course, from the political heads—who are elected by the people. The legislative functions of government are kept distinct from the purely administrative and judicial departments. The people legislate and govern through their representative assemblies, in accordance with the wise principles of English government. They elect in the first place to the provincial legislature men to legislate for the whole province; in the next place, they select councilors, mayors and reeves, to legislate for them in certain definite municipal divisions, on such matters as local taxes, sewage, water, and other necessities and conveniences of life, as provided and limited by the law of the general legislature. The head of the executive authority and also of the legislative branch is the lieutenant-governor, who holds his office by virtue of the highest authority of the Dominion, and quite independently of the provincial government. His advisers, the executive council, are not appointed directly by the legislature, to whom they are responsible, but by the lieutenant-governor whose choice, however, is limited by the unwritten law, or the conventions and maxims of the constitution, to those representatives who have the confidence of the majority of the people's house. All provincial or public officials, apart from municipal officers, are appointed by the lieutenant-governor on the advice of his council. The sheriffs, registrars, county clerks, and those other officials in counties, already enumerated, are not appointed or even nominated by the councils of those districts, but by the Ontario government, since their duties are provincial in their nature. The students of English history will remember that the sheriff or shire-reeve was one of the most

important judicial officers of early English times. While acting in a representative capacity he was elected and presided over the *scirgemot* or shire-mote. But many centuries have passed since he was deprived of his important functions in the administration of the king's justice, and became a crown officer, performing important executive and ministerial duties in connection with the courts. Such officers as masters, county clerks, county attorneys, and clerks of the peace as well as others, having certain defined duties to discharge in the courts, are also essentially crown appointments. The fountain of justice is the crown as represented in the courts, and it would be an anomaly in the English or Canadian system to make such officers elective or to hand them to merely local administrative bodies of a limited sphere of authority like municipal councils. Even in the case of the municipalities it has been considered wise to limit the privileges of the people, and give their representatives alone the right of electing such officers as clerks, treasurers, auditors, who have clerical and ministerial duties to perform, and whose qualifications can be best tested and understood by a small body of chosen men. The most important county officer, the warden, is not elected by the people generally, but by a special body of men, the reeves and deputy reeves, or heads of councils of the townships of the county municipality. The heads of councils in cities and other municipalities, into which the county is divided, are elected directly by the ratepayers of those municipal divisions,—a departure apparently from the principle observed in the case of the warden, and other officers of the municipalities. Experience shows that the election of such heads of councils, who are elected on short terms of office, only for one year in all cases, and may have no experience whatever of municipal work, does not work very satisfactorily in cities, where knowledge and experience, longer tenure of office, and larger control over work of administration are so very desirable.

Before I continue this argument it is interesting to compare the foregoing list of persons engaged in Ontario in legislative, administrative, judicial and municipal work, with similar classes in the great State of Ohio, whose natural resources, population, educational and political progress and wealth naturally lead one to make comparisons with the Canadian province.

At the present time citizens in Ohio vote for the following classes of officers and representatives: \*

1. Federal Officers: Electors of the President of the United States, once in every four years. Members of the House of Representatives of the United States, once in every two years.

2. State Officers: Members of the board of public works, (for three years' term); judges of the supreme court (for five years), once in each year. Governor, lieutenant-governor, secretary of state, treasurer, attorney-general, State senators (elected in each territorial district), members of the State House of Representatives (elected in each representative district), once in two years. State commissioner of common schools, clerk of the supreme court, once in three years; auditor of the State, once in four years.

3. District Officers: Circuit judge (for six years), once in two years. Judge of the court of common pleas (for five years), once in five years. Member of the State board of equalization, once in ten years.

4. County Officers: County commissioners (for three years), infirmary directors (for three years), once in each year. County treasurer, sheriff, coroner, once in two years. County auditor, recorder, surveyor, judge of probate, clerk of court of common pleas, prosecuting attorney, once in three years.

5. City Officers: Members of the board of police commissioners (in the majority of cities), members of board of

\* I have taken the foregoing list from Bryce's "American Commonwealth" (II, pp. 430, 431. First ed.) after comparing it with the latest edition of the "Ohio Voters' Manual." This list, as given above, omits all officers appointed by councils, as not material to my argument.

infirmary directors (for three years), trustee of water-works (for three years), once every year. Mayor, city clerk, auditor (if any), treasurer, solicitor, police judge (in large cities), prosecuting attorney of the police court (in large cities), clerk of the police court (in large cities), city commissioner (in second-class cities), marshal (only in small cities), street commissioner, city engineer and fire surveyor (when elected at the polls, as city council determine), superintendent of markets (when elected at the polls as city council determine), all once in two years.

#### IV.

It will be seen from the foregoing comparison between a great Province of Canada and a great State of the Federal Republic, that the legislative departments of both countries—the House of Commons of the Dominion and the Legislative Assembly of the Province, and the House of Representatives of the National Congress, and the two houses of the State Legislature—are elected directly by the people in their respective electoral districts. That is to say, the principle of electing men who act in a legislative and representative capacity is strictly observed in each country. But here the comparison practically ceases. In the Province of Ontario all public officers who may be compared with those in Ohio—and a reference to the two lists will show that both countries have necessarily similar classes of officials—are appointed by some permanent or responsible authority, removed from direct popular influence, while in the American State they are elected by a vote at the polls in all cases. The mayors and reeves of Ontario, as I have already said, are somewhat exceptional, but their terms of office are very brief unless they are re-elected,—which frequently happens,—and they do not fall within the strict category of such permanent executive, clerical or administrative officials, as clerks, treasurers and auditors, who are appointed by the councils in Canada

while they are elected directly by the people in Ohio. In that State, as Dr. James Bryce has pointed out, there are twenty-two different paid officers—including, for argument sake, legislators in that class—which a voter annually has to allot by his vote; that is to say, "he must in each and every year make up his mind as to the qualifications of twenty-two different persons or sets of persons to fill certain offices." "As nearly all these offices are contested on political lines," continues the same high authority, "though the respective principles (if any) of Republicans and Democrats have no more to do with the discharge of the duties of the State and local offices than the respective principles of Methodists and Baptists, nominations to them are made by the respective party organizations. Candidates for all, or nearly all the foregoing offices, are nominated in conventions composed of delegates in primaries." On the other hand, in Ontario, the electors have to consider the claims of candidates for election to the House of Commons of the Dominion only once every four or five years (unless sooner dissolved, and that happens only under very exceptional circumstances), and of candidates for election to the House of Assembly of the Province only once every four years (unless sooner dissolved, which only happens under rare circumstances). All public officers connected with those legislative bodies, or with the public service, are removed from the immediate operation of these elections since their tenure is permanent, and certain classes of appointments, *when vacant*,—such as shrievalties, registrarships, county attorneys, etc., are alone influenced by the result, since political patronage necessarily rests with the successful party as an incident of party government. I ask my readers to keep these important facts in view when I come to show the positive advantages the public derive from the infrequency of elections, and from the checks that are imposed on popular caprice, prejudice and passion by the system of appointments to all offices of an administrative or judicial character.

## V.

As I have previously shown, it is not a question of electing judges or the officers immediately connected with the civil service that is directly at issue, but the discussion is confined for the present in Ontario to certain persons whom it is attempted to class as county officers. But the nature of the discussion will best be understood by referring to the following questions which appear in the circular that has been distributed among those who have been called upon to state their opinions on the subjects of the inquiry before the provincial commission:

"Assuming that the following officials are those under consideration :

Registrars of deeds,  
Local masters,  
Sheriffs,  
Local and deputy registrars of the high court of justice,  
Deputy clerks of the crown,  
Clerks of county courts,  
Registrars of surrogate courts,  
County attorneys and clerks of the peace,  
Division court clerks,  
Division court bailiffs—

"Do you approve of the appointment of any, or all, of the above officers being in the hands of the provincial government (as at present), or should they, or any of them, in your opinion be otherwise selected; if so, by whom, and for what reasons?

"If you advocate a change in the mode of appointment of any of the above officers, how, and to what supervision should the officer be amenable for efficient and faithful performance of duty during the term of office?

"Do you approve of the system of paying any, or all, the above officers by fees (in whole, or in part as at present)? If not, what other or better plan do you suggest, and for what reasons?

"If you approve of election by the people of the above officers, or any of them, what method of public inspection, during the term of office, do you suggest for securing uniformity of procedure, and the safety of the public?

"If you approve of selection by the municipal council, what method of public inspection do you suggest with a view to securing the objects mentioned in the previous question?"

It will be seen that there are practically two questions involved—one in relation to the payment of public officials, and the other in relation to the mode of appointing them. It is the latter question which is of greatest importance, since on its judicious solution rests, in a large degree, the future efficient and honest administration of government; but before I give my reasons for this emphatic opinion it will be well if I dispose of the first or subordinate question of salaries, which has its interest for American readers since so many important officers are also paid by fees in the several States. The majority of the officers in question are paid by fees regulated by statutes applicable to their respective offices, but it is only sheriffs and registrars who receive a large amount of money paid this way, and whose salaries, in some instances, are believed to be larger than their services merit. As a rule the sheriffs are paid entirely by such fees as remain to them after paying all the necessary expenses of their office. The registrars are also entitled to a certain amount of the fees that they collect under the law, but the statute regulating their office limits the sum they can retain for their own use up to \$2500. Beyond that amount they can retain:

|                                                                |   |   |   |       |   |       |
|----------------------------------------------------------------|---|---|---|-------|---|-------|
| Ninety per cent in excess of \$2500, and not exceeding \$3000. |   |   |   |       |   |       |
| Eighty                                                         | " | " | " | 3000, | " | 3500. |
| Seventy                                                        | " | " | " | 3500, | " | 4000. |
| Sixty                                                          | " | " | " | 4000, | " | 4500. |
| Fifty                                                          | " | " | " | 4500. |   |       |

This regulation appears to bring the salaries of registrars, as a rule, within a very moderate amount, while it appears from the official returns yearly made to the government of the gross and net amounts of fees collected by the sheriffs and other officers named above, none of them are paid what may be considered in any sense extravagant sums or beyond what they ought to receive in view of their responsible and onerous duties; indeed, in the new and thinly populated districts, the government is, by the law, obliged to make up the deficiency of fees, and pay them an amount which will

bring up their salary to at least \$900 or \$1000. The following tables will show fairly enough for our purpose the average amount received in cities and counties of the province by the officers in question.

*In the county of Carleton, which has a city, Ottawa, within its limits:*

|                                                                    |        |
|--------------------------------------------------------------------|--------|
| Sheriff, average salary for five years previous to 1893, . . . . . | \$3031 |
| Surrogate judge (held by county judge), commuted at, . . . . .     | 500    |
| { Local master,* average for five years, . . . . .                 | 2294   |
| { Deputy registrar,* " " " . . . . .                               | 639    |
| { County attorney,* " " " . . . . .                                | 540    |
| { Clerk of peace,* " " " . . . . .                                 | 1062   |
| { Deputy clerk of crown,* " " " . . . . .                          | 812    |
| { County court clerk,* " " " . . . . .                             | 934    |
| { Surrogate registrar,* " " " . . . . .                            | 920    |

*County of Huron, without a city:*

|                                                            |        |
|------------------------------------------------------------|--------|
| Sheriff, average salary for five years, . . . . .          | \$2013 |
| Surrogate judge, commuted at, . . . . .                    | 792    |
| Local master and deputy registrar,* commuted at, . . . . . | 1250   |
| { County attorney,* average for five years, . . . . .      | 564    |
| { Clerk of peace,* " " " . . . . .                         | 862    |
| { Deputy clerk of crown,* " " " . . . . .                  | 830    |
| { County court clerk,* " " " . . . . .                     | 710    |
| { Surrogate registrar,* " " " . . . . .                    | 1191   |

Then there are the salaries of registrars, who received in 1893, in the most populous legal divisions—the city of Toronto, East and West—fees to the gross amount of \$24,797 and \$16,719 respectively, of which the registrars received under the statutory limitations from \$4000 to \$4500 each. As a rule, \$3000 is the highest average amount received as salary in the counties, and \$500 is the lowest in a very few and small municipalities.

Much misconception exists as regards the amount of salaries received by the sheriffs and registrars, and has consequently originated the present agitation on the subject; but the figures I have just given clearly show that none of these officers are overpaid, as is the case with sheriffs, county

\* The offices named in the brackets may be, and are generally, held under the law by the same person.

clerks, and other officials, elected by the people in some cities and counties of the States of the American federation. In the case of registrars the law practically recognizes the advisability of limiting the fee system, and of fixing salaries as far as possible. For my own part I agree with those who believe that fixity of salary and permanency of tenure are the true principles to be followed in the case of all public officials. Every officer should receive an exact sum, equivalent to the value of his service to the public, and commensurate, of course, with his position and responsibility. Especially should the responsibilities of sheriffs be carefully considered in case of a change of system. These officers are liable to litigation arising from the mistakes of their deputies and agents. Consequently, in fixing their salaries it is important that not only their dignified position as the highest executive officer of the courts, but also their legal responsibilities should be borne in mind, and they should be saved from all personal losses which do not accrue from any ignorance or carelessness on their part. One thing is quite certain, that such officers should have full control over the appointment of their deputies and officers, for otherwise it would be unfair to make them responsible for the acts of officers through whom they necessarily execute many of their functions. But while we may see the difficulty of a change of system in the case of sheriffs, there is none in respect to the other officials in question, and they should receive a fixed salary from the public treasury, and pay into it all fees they collect by virtue of their offices. As things are now, the fee system is not liable to the great abuses to which it is necessarily subject under the elective system in American States. Politics run high in Canada, but contributions to corruption funds are not made by public officials, and the political manager is unable to avail himself of the advantages which the fee system gives him in the States of the Federal Union in the case of candidates whose election depends on skillful party manipulation and all those arts

which the "machine" practices to carry their ticket. If the fee system were entirely swept away in every State of the Union, the party machine would be deprived of a large amount of funds that now periodically go to corrupt the electors and place certain professional politicians in office.

## VI.

Coming now to the important question at issue, it is suggested, for reasons which are entirely inadequate, to change the system which has always obtained in Canada, and give to the people a direct choice of certain public officers who are ministerial and executive, and have also important duties to perform in connection with the administration of justice. The crown, neither in England nor in Canada, has ever yielded its right to appoint such officers; in other words, such patronage has always been one of its prerogatives. In old times of English history, when the sovereign was attempting to push his prerogative to extremes and to limit the powers of the House of Commons—in those times when parliamentary government was in a process of evolution—offices were a prolific fund of corruption in parliament and constituencies. Now, with the limitation of the powers of the crown, the old prerogative right of appointments has been practically handed to the constitutional advisers of the sovereign, responsible to parliament. With the development of parliamentary government and the establishment of wise rules which regulate appointments and promotions to the permanent civil service, the flagrant abuses that crept into the old system and disgraced the whole body politic of England have gradually disappeared. The "spoils" system is entirely unknown in Great Britain. At the present time, says an authority\* on such subjects, "it is worthy of note that direct election to office—supposed to be characteristic of the democratic spirit—has no place in English political ideas. The few instances in which it occurs are regarded

\* Professor Robertson, M. P., LL.D., article, "Government," in *Ency. Brit.*

with indifference. The election of coroner by the electors is universally condemned. In the few parishes where the clergyman may be appointed by the parishioners, the right is often left to be exercised by the bishop." Canada, as in the case of her legal and political institutions generally, has closely adhered to the practice of the parent state with respect to appointments. In the years that preceded the establishment of responsible government in a complete sense—from 1791 to 1841-54—the appointment of public officials of all classes was in the hands of the governors, cliques and compacts. Those were the days of irresponsible officialism and family compacts, when Downing street ruled in purely local affairs, and favorites of governors and high officials were selected with an utter indifference to the wishes of the majority of the people, or the popular assembly. According to Lord Durham, who reported in 1839 on the state of affairs in Canada after the Rebellion of 1837-38, what was known in Upper Canada, now Ontario, as "the family compact"—a combination of aristocracy and officialism rather than a purely family connection—"possessed almost all the highest public offices, by means of which, and of its influence in the executive council, it wielded all the powers of government; it maintained influence in the legislature by means of its predominance in the legislative council; and it disposed of the large number of petty posts which are in the patronage of the government of the province." The executive councils in those days of struggle for popular government "enjoyed the confidence of no considerable party, whilst the family compact was in fact supported by no very large number of persons of any party." Such things were possible in days when the executive council owed no responsibility to the people or their representatives in the popular branch of the legislature.

From 1840 to 1854 a responsible ministry was established in all the provinces of the present Dominion, although soon after the legislative union of the Canadas in 1841 one of the

governors-general, Lord Metcalfe, attempted to make appointments without reference to his constitutional advisers, the last effort of prerogative attempted by a representative of the crown in Canada. Since those unsettled times, the rule that obtains in England has been carried out in all the provinces of Canada. All the appointments are made by the governor-general of the Dominion, and by the lieutenant-governors of the provinces in accordance with statute or usage. Such appointments, however, as shrievalties, registrarships, and other offices mentioned above do not come within the category of the appointments to the civil service, but are made by the government from their political supporters as a rule, and as a necessary sequence of party government. They are often, though not necessarily, made on the recommendation of a member and other influential persons supporting the government, whenever a vacancy occurs in the office;—removals for political reasons or “rotation in office” being unknown to Canada’s political system—but in every case they are the subject of discussion in the executive council, which becomes directly responsible for the advice it gives to the lieutenant-governor, whose duty it is to inform himself thoroughly with respect to all nominations to office, before he signs the commission or order in council authorizing the appointment. Should he believe from facts that have come to his knowledge, that an appointment is most undesirable in the public interests—a very rare case indeed in Canadian political annals—it is for him to exercise that pressure which he can constitutionally exercise on all matters on which he is advised and his action is required. The legislative assembly, as a body, does not assume to make such appointments or to interfere directly with the legal powers of the executive authority in such matters; but it may, and sometimes does, sharply criticise and even censure the conduct of the executive with respect to appointments. In every case it has a right to the fullest information on the subject. Here is one of the advantages

of the system of parliamentary government, as worked out in England and Canada. The presence of the advisers of the executive—practically the executive itself—in the legislature, gives that body supreme control over its acts. A house divided into two contending parties, a government and an opposition, will not fail to give due importance to any aggravated case of the abuse of patronage. Any government or member thereof, that has been guilty of such abuse, is open to the fullest criticism in the legislature and in the public press. Nothing can be concealed from public view, and responsibility rests where it should. Every member of a government, under the English or Canadian system of parliamentary government, must act under a feeling of direct responsibility. Every such minister has his ambitions, and dare not in the face of public opinion to which he must submit himself sooner or later, make what would be a notoriously bad appointment. Personal qualifications, character and local sentiment in the district where the officer is placed, are all questions to be immediately considered by the member and the minister recommending the filling of the office. Of course there are defects in such a system as in all methods of government. Some appointments are weak, if none are notoriously bad; but they are on the whole good. The public service of Ontario, like that of Canada, generally has, as a rule, been creditable to the country, and remarkably free from political influences when men are once appointed to an office. Corruption and dishonesty are not charged against it as a class. Permanency of tenure, freedom from political intrigue, independence of popular elections, are the characteristics of the service.

Such satisfactory results, it is necessary to bear in mind, have been produced by the operation of responsible government. It is claimed that the system gives too much power to the executive authority since all patronage rests in their hands, but experience shows that the exercise of the power is on the whole decidedly in the public interest. An executive

should be strong under such conditions. If the government did not act under a sense of immediate responsibility to the legislature, if appointments were not limited by civil service rules of law, if all public officials had not practically a life tenure, then patronage would be dangerous as every American publicist and statesman knows full well.

It is impossible to believe that, were appointments in any cases taken from the lieutenant-governor in council and given to a county council—the less dangerous choice, were it a practical question between that method and election by popular vote—the public interests would be better served, and wiser appointments made. A greater responsibility must rest on a minister of the crown, and on the government who are responsible for the acts of each and all its members—on a government immediately amenable to the criticism and censure of the legislature, and later to the people at the polls—than can be placed on a body of municipal councilors, acting within an inferior and limited sphere of action, and not exposed to the wide range of discussion to which the highest legislative body in the province can submit its own committee—the executive council. The conscience of a man in office must bear some proportion to his duties and responsibilities. A man in a small area of action and criticism can never as clearly be brought to see the consequence of his political conduct as one in the wide theatre of national action. *Noblesse oblige* is more heard of at Washington than even in Boston municipal politics. It says much for the efficiency and integrity of the public service of Ontario—and I refer here particularly to the class of officials in question—of the service appointed under such conditions as I have mentioned, that it has not been shown guilty for the past twenty-seven years of such incompetency and malversation of funds as have even occurred in connection with the funds of a few county councils. What cases of mismanagement, speculation and jobbery have come to light of late have been in the administration of the

affairs of the largest Canadian cities. At the present time the city of Montreal appears to require a Parkhurst, and Toronto has asked the county judge to investigate charges that have been made—and the inquiry has proved, with too much truth—against certain aldermen of selling their vote and influence to contractors. It is well to bear in mind that in these cases it is the elected men, the aldermen, whose conduct is arraigned. It is the elective principle that is now in question, when applied to men whose duties are those of managers of a corporation. Indeed, there are many influential and thinking men in Canadian cities—in Toronto especially—who express the opinion that a small permanent commission appointed by the government would best manage civic affairs. Still, in the face of such facts, it is proposed to extend the principle even further, and disturb a system of appointments which has exhibited no such discreditable results as we have seen in cities and even counties.

As things are now, municipal elections are kept fairly free—in the great majority of counties, largely free—of all political influences; but it is quite certain that if these councils are to be made the arena of political intrigue for the filling of provincial offices, it will not be long before they will become notorious for political bitterness and worse,\* and the party spirit which runs sufficiently high in Canada under ordinary conditions will be intensified to a degree, and bring about results of which every citizen across the frontier can give Canadians some very practical examples.

## VII.

But Canadians need not go far to come to a conclusion as to the effects of an elective system when applied to any class of public officials. Their neighbors in the States of the Federal Republic have been, for many years in their history,

\* Read what Mr. Fiske says ("Civil Government in the United States," p. 135) with respect to the evils that have arisen from "the encroachments of national politics upon municipal politics."

giving the world very significant examples of the results of such a system. Their experience is submitted to the serious reflection of those who would change the law which makes the government responsible for all public appointments, and give in its place a system which places the responsibility nowhere. Can any one argue that the body of the voting public who elect can be made responsible for the result? The legislature in the first place, and the people at a final stage, can censure a government, or turn it out of office, since ministers are directly responsible for every act of administration. But *Quis custodiet custodes?* Who will check the people?

Among the sources of the strength of the Canadian system of government are these: the infrequency of political elections; the holding of elections for the Dominion parliament and for the legislative assemblies of the provinces at different dates; the separation of federal issues, as a rule, from provincial questions—though the attempt is too often made to mix them; the practical separation of municipal from provincial or other political questions; the permanency or non-political tenure of the civil service. On the other hand, the weaknesses of the American system—in fact, the evils that are sapping the republican and purely democratic institutions of the States—mainly arise from these causes: the intimate connection between national, State and municipal politics; the frequency of elections which bring into play all the schemes and machinations of the party managers and “bosses;” the popular election and short tenure of so many public officials who, as a consequence, become more or less partisans, and supply even now, in defiance of the law in many States, a considerable proportion of the corruption funds of political parties.

The conclusions, then, to which an impartial and honest observer of contemporary political management in the United States must inevitably come are these, briefly summed up:

That the party machine, as managed by the boss, is destructive of public morality.

That it is the elective and the "spoils" system by which a horde of public officials obtain office that gives vitality to the machine and its creatures, and is weakening the foundations of republican or democratic institutions.

That rings and bosses will exist and thrive as long as the great majority of public officers, including judges, are elected or appointed on political lines.

That the security of the commonwealth depends on the establishment of a permanent public service in every State, in the appointment of the judiciary by a regularly constituted authority like the governor or the legislature; on the removal of municipal contests from Federal or State elections; on limiting in every way the number of civic or court officers elected by the people and placing them in the hands of mayors or councils; on giving a life tenure—that is to say, during good behavior—to all important executive, judicial and administrative officers; on the effective operation of the Australian ballot in every election, civic, State or national, and on the general adoption and execution of most stringent laws against bribery and corruption in every possible form.

That by such measures the machine will soon break down, since the party boss will not have the same facilities for exercising his peculiar arts that he has at present, while he can practically control the election or patronage of so many public offices.

### VIII.

No one who studies the condition of affairs in the United States, or who has had opportunities, like the writer, of conversing with men of intelligence and education whose minds are not warped by party prejudice, and who believe that frankness is better than silence when their country's honor or stability is at stake—no one under such circumstances but must come to the conclusion that there are

already a number of people in the republic—a small fraction, it is true, of the nearly seventy millions of people, but still a “saving remnant” perhaps—who are striving for a radical change in their elective system. We have evidence of this wise and growing sentiment in the strenuous and, in part, successful efforts made of recent years to build up a permanent civil service for the nation, in such constitutional changes as have been passed in the State of New York for the separation of municipal from State elections,\* in the strengthening of the executive authority of the mayors in numerous cities and giving them control of important civic appointments, in the lengthening of the term of office of the State judiciary and other officials in several States, and lastly, though not least, in the adoption of the ballot system of Australia.

The proposition that has been sometimes urged that the Presidential term should be at least six years is also an evidence of the current that is setting in against too frequent elections, which keep the public mind in constant state of agitation, unsettle business, and give ready occupation to the professional politician. Perhaps in no respect has there been a more earnest effort to limit the elective principle than in the case of the judiciary. Everyone will admit that the strongest judiciary, for learning and character, is the Federal bench, which is removed from all popular influences, since it is nominated and appointed by the President with the consent of the Senate, has practically a life tenure, and cannot have its compensation diminished during the term of office of a judge. It is needless to cite instances of the weakness

\* It is an interesting fact which may here be mentioned, that Canada has had, by law and practice, for years, the reforms that the New York convention recommended and the people of the State recently ratified: a separation of municipal from State elections; naturalization laws; civil service statutes; prohibition of riders in appropriation bills; printing of all bills before passage; prohibitions against pool-selling, book-making and lotteries. The Australian ballot and stringent anti-bribery and corruption laws have been in operation for years. Contract labor in prisons is permitted, not disallowed, as in the New York constitution—confessedly its weak point, showing the influence of the labor element on the politicians of the convention. All these Canadian reforms have been among the results of a strong executive, represented in and responsible to parliament.

of the State judiciary which owes its position to party—we have had recent illustration of such weakness in the case of a judge at Albany—but happily for the interests of justice the consequences have never become so serious as one would, with some reason, suppose they would be ; and that chiefly on account of men, once on the bench, wishing to earn the good opinion of the better elements of the bar—notably high in every State—and feeling that respect for law and its attributes which animates all men brought up under the influence of English legal institutions once they are placed on the judgment seat. Nearly forty years ago John Stuart Mill,\* writing on this very subject, apprehended “ that the practice of submitting judicial officers to periodical popular re-election will be found to be one of the most dangerous errors ever yet committed by democracy, and were it not that the practical good sense, which never totally deserts the people of the United States, is said to be producing a reaction likely in no long time to lead to the retraction of the error, it might with reason be regarded as the first great downward step in the degeneration of modern democratic government.” Writing a quarter of a century later Dr. Bryce tells us that “in many American States the State judges are men of moderate ability and scanty learning, and sometimes vastly inferior to the best of the advocates who practice before them.” He admits that pecuniary corruption seems to be very rare among them, but “there are other ways in which sinister influences can play on a judge’s mind, and impair that confidence in his impartiality which is almost as necessary as impartiality itself.” And, he adds, with obvious force, “apart from all questions of dishonesty or unfairness it is an evil that the bench should not be, intellectually and socially at least, on a level with the bar.” But while the mischief that has arisen from the application of the elective principle to the State judiciary is undoubtedly “serious” in a measure, justice is

\* See “Considerations on Representative Government,” Chap. XIV. Also remarks of Mr. Fiske, “Civil Government,” pp. 179, 180.

fairly administered on the whole, not only for the reasons I have briefly stated above, but because in so many States an upright and good judge has reason to expect a long tenure of office. The hope entertained by Mr. Mill has not yet been fully realized, but nevertheless the tendency of a sound public opinion is shown by the fact that salaries have been generally raised, and the terms of office lengthened.\* Good judges are continued from term to term, so that a better class of men are encouraged to accept this high responsible position. It is significant that of at least thirty States that have revised their constitution in essential respects within fifteen years or so, only one has taken the appointment from the legislature or governor and entrusted it to the popular vote. Perhaps the time is not far off when the judiciary will have a life tenure of office, even though election by popular vote remains in force in the majority of States, as at present.

## IX.

I have dwelt at some length on the experiences of the United States in working out the elective principle in their system of government and especially in connection with those classes of public officials who should be non-political in their tenure, so that my Canadian readers may thoroughly appreciate the consequences of the arguments of those who have forced the government of the premier province of Ontario—a province governed on the whole with discretion and ability, and where officials are, generally speaking, able and conscientious in the discharge of their duties—to gather the opinions of the intelligence of the country, whether they should not inaugurate a system which has been confessedly productive of so many injurious results on the other side of the border. I believe that one or two thoughtless and ill-

\* Massachusetts, Rhode Island, New Hampshire and Delaware alone retain a system of life tenure or of good behavior. In the other States the longest term is in Pennsylvania, 21 years; the shortest in Vermont, 2; in one State it is 15; in another, 14; in four, 12; in one, 10; in three, 9; in seven, 8; in ten, 6; in the remaining States, from 4 to 7.

informed persons have ventured to go so far as to urge the election of the minor judiciary like police magistrates and county judges; but such persons do not in any way represent the intelligence or wisdom which governs the great body of the people in a province, which, above all other sections, prides itself in its complete and well-administered system of local government, and in its free education, which gives every boy and girl in the land admirable opportunities from the common school to the collegiate institute or high school or the provincial university with its large professorial staff. Canada has one of the best devised systems of government in the world. Its strength consists in the fact that it is based on the experiences of the two great countries to which Canadians naturally look for instruction or warning—England and the United States. Its institutions have kept pace with the development of the sound principles of parliamentary and federal government, and possess all that elasticity and capacity to meet critical situations as they arise, which is wanting in the too rigid system of the United States whose constitution is mainly based on principles which existed in the middle of last century, and are now not quite equal to the conditions of modern political progress. Neither at Washington nor in any State of the Union is there a ministry owing responsibility to the people's representatives, and the consequence is a constant friction between the executive and legislative authorities, and an absence of all such control of legislation and administration, as exists under a system of parliamentary government. On the other hand, there is at Ottawa and in every province of the Canadian federation, a cabinet which represents the majority of the people as represented in the legislature, which is constitutionally bound to explain and defend every executive and administrative act, from the appointment of a lieutenant-governor or a judge to a sheriff, registrar or county attorney. Its tenure of office depends on the confidence of the legislature and if its members forfeit that, then they may appeal

to the people in accordance with the practice and rule of responsible government. Such a deadlock as may occur at any time between President and Congress within the next two years is impossible under the Canadian system. The executive in Canada is always represented and consequently able to exercise a potent influence in the halls of the legislature by the means of ministers responsible to the popular house. An appeal to the people as a consequence of a deadlock or crisis, will immediately settle all difficulties and bring in either the same ministry or a new cabinet with adequate support to carry their measures in parliament, and administer public affairs. The remedy under such circumstances is speedy and decisive—not delayed, as in the United States, by the checks and guards that prevent popular opinion acting immediately on the executive and administration. In Canada the judiciary is independent equally of the crown and of popular influences, since a judge can only be removed during his life tenure of office by successful impeachment in parliament. The public service enjoys all the advantages that arise from permanency of tenure and independence of a popular vote. The people know on whom to fix responsibility for every bad appointment. Under the system of the United States an incapable and even unworthy man may be appointed to an office, and continue in it in the majority of cases as long as he can retain the confidence and support of the party manager of his district. An incompetent man may be elected time and again, and the nation know and care nothing about it, but in Canada the humblest appointment may be subject to the rigid scrutiny of the parliament of Canada or of the legislature of a province, according as it is of Dominion or provincial character. All the debates of the parliament and the legislatures of Canada are reported in the press to an extent that is not customary in the case of Congress or of the State legislatures, and what is said reaches every corner of the Dominion. Canadians can fix the blame on some one, but who is to punish the

party manager or the people misled by him? A system of government like that of Canada which places the responsibility on a body of legally constituted advisers of the crown, or in other words a committee of the legislature, has clearly enormous advantages in the case of appointments to public office over a system like that of the United States which spreads responsibility over so wide a surface that no one may be reached.

The writer believes, after giving much consideration to this important subject, that it would be indeed an unhappy hour for the good and efficient government of Canada, were the intelligence of any section to be so blinded as to lead it away from the sound doctrines that have hitherto preserved us from the evils which have weakened the political structure of the Federal Republic. If in a moment of indiscretion any Canadian legislature were to yield to the ill-advised demands of party in order to obtain a temporary political advantage, and attempt the experiment of the elective system in the case of the officials whose tenure of office is now a matter of deliberate inquiry, it would be literally the thin edge of a wedge which would gradually and surely split up the durable foundation on which government rests. The history of the American States very clearly shows that when you once give certain privileges and rights to a people it is not possible to withdraw them directly and immediately. No politician would dare now to ask for such constitutional changes as would suddenly sweep away the entire elective principle in the case of all national and State administrative, executive and judicial officers, except the president, vice-president, governors, lieutenant-governors, and political heads of departments who occupy positions somewhat analogous to those of ministers of the crown but without their responsibilities.\* All that may be attempted

\* "The great number of candidates for election confuses and disgusts the voters in much the same degree that it makes the business of caucus management intricate, active and profitable. The election of such officers as constables, county clerks, secretaries, justices and judges, whose functions are in no sense

is to curtail and modify those privileges from time to time, as has already been done in the case of municipal elective officers and of the judiciary. If once in Canada the elective principle were applied to sheriffs, registrars and a few other officials in the province, it would not be long before a politician would make himself popular by extending the system to police magistrates, and all classes of officials. In all probability, the pressure would be so great even on the Dominion parliament that it would have great difficulty in stemming the torrent that provincial indiscretion might set flowing by the removal of those wise barriers which sound policy has heretofore raised up against popular and party license. A federal union rests on a broad basis of states or provinces and the political conditions of every state or province must more or less, sooner or later, influence those of the federation or dominion to which those states and provinces give life and union. Once adopt the elective principle generally in the provinces, it is obvious the consequences would be most serious to the Dominion. The result would be that Canada would be no longer English as respects a fundamental principle of government. She would become Americanized by the adoption, not of those features of the system of her neighbors which might give her additional strength and unity, but rather of those methods which would be more or less destructive of political morality and in direct antagonism to those principles of sound and efficient government which true Canadians are ambitious to see gather force while they are laboring to establish on durable foundations a new nationality on this continent.

*House of Commons, Ottawa, Canada.*

J. G. BOURINOT.

representative, and who were appointed until the spoils system had become established, is indefensible upon any sound principles. The changes that made them elective were naturally desired by all those interested in the patronage of party chieftains or gains of primary elections. To make the re-appointment of such officers safe and satisfactory, we must reform the civil service. To relieve the primary system of the demoralizing duty of selecting officers in no sense representative, and only ministerial and administrative, we must make such officers again appointive." D. B. Eaton in "Cyclopædia of Political Science," Art. "Primary Elections."

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